

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LEE WILLIAM DEBACK,

Defendant-Appellant.

UNPUBLISHED

December 13, 2002

No. 233794

Muskegon Circuit Court

LC No. 00-045190-FH

Before: Owens, P.J., and Murphy and Cavanagh, JJ.

MEMORANDUM.

Defendant appeals as of right his bench trial conviction for second-degree criminal sexual conduct, MCL 750.520c. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with four counts of fourth-degree criminal sexual conduct, based on digital penetration of his fourteen-year-old stepdaughter. MCL 750.520d(1)(a) and (d). The trial court found defendant guilty of one count of second-degree criminal sexual conduct, based on sexual contact with complainant. Shortly after trial, the prosecutor filed an amended information containing the second-degree CSC charge. The trial court denied defendant's motion to vacate the conviction based on lack of notice.

A trial court "may at any time before, during or after trial amend the information in respect to any defect, imperfection, or omission in form or substance or of any variance with the evidence." MCL 767.76. An amendment may add a new charge. *People v Fortson*, 202 Mich App 13, 15; 507 NW2d 763 (1993). The amendment should be disallowed if it causes unacceptable prejudice to defendant because of unfair surprise, inadequate notice, or insufficient opportunity to defend. *People v Hunt*, 442 Mich 359, 364; 501 NW2d 151 (1993).

The court must determine whether, under the facts of the case, defendant had adequate notice of the need to defend against the newly added charge. *People v Adams*, 202 Mich App 385, 388; 509 NW2d 530 (1993). Factors to be considered are the language in the information, the similarity between the offenses, and when the defendant learned of the amended charge. *Id.*, 389-391. Here, the language of the information was broad. Where the second-degree CSC charge was very similar to the third-degree CSC charges, and defending against the charge would not require a different trial strategy, defendant was not prejudiced by the post-trial amendment to the information.

Affirmed.

/s/ Donald S. Owens
/s/ William B. Murphy
/s/ Mark J. Cavanagh